

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MICHAEL MOSLEY,

Plaintiff,

vs.

CLARK COUNTY DETENTION
CENTER,

Defendants.

Case No. 2:11-CV-00538-JCM-(PAL)

ORDER

Plaintiff has submitted an application to proceed in forma pauperis (#2) and a civil rights complaint pursuant to 42 U.S.C. § 1983 (#1). The court finds that plaintiff is unable to pre-pay the filing fee.

The court has reviewed the complaint (#1), and plaintiff will need to file an amended complaint. This courts must dismiss the claim of a plaintiff proceeding in forma pauperis, if the action “is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e). Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is essentially a ruling on a question of law. North Star Intern. v. Arizona Corp. Comm’n, 720 F.2d 578, 580 (9th Cir. 1983). In considering whether plaintiff has stated a claim upon which relief can be granted, all material allegations in the complaint are accepted as true and are to be construed in the light most favorable to the plaintiff. Russell v. Landrieu, 621 F.2d 1037, 1039 (9th Cir. 1980). Allegations of

1 a pro se complainant are held to less stringent standards than formal pleadings drafted by lawyers.
2 Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam).

3 Plaintiff alleges that he was detained in the Clark County Detention Center on
4 February 16-17, 2011. While there, he slept on an unclean mat on the floor. The room contained
5 30-40 other inmates, with only one toilet and sink for their use. Plaintiff alleges that he developed a
6 rash and other ailments due to these conditions. Taking these allegations as true, plaintiff has stated
7 a claim that the relevant jail official was deliberately indifferent to the conditions of his
8 confinement. See Farmer v. Brennan, 511 U.S. 825, 834 (1994); Wilson v. Seiter, 501 U.S. 294,
9 305 (1991).

10 The problem with the complaint is that plaintiff has not identified the relevant jail
11 official. The only defendant that plaintiff names is the Clark County Detention Center, which does
12 not have a legal existence. In other words, plaintiff cannot sue a building. Plaintiff will need to
13 name the person who had custody over him or the Las Vegas Metropolitan Police Department,¹
14 which is the agency that operates the jail and which has the capacity to sue and to be sued, as a
15 defendant.

16 IT IS THEREFORE ORDERED that plaintiff's application to proceed in forma
17 pauperis (#2) is **GRANTED**. Plaintiff shall not be required to pre-pay the full filing fee of three
18 hundred fifty dollars (\$350.00).

19 IT IS FURTHER ORDERED that the movant herein is permitted to maintain this
20 action to conclusion without the necessity of prepayment of any additional fees or costs or the
21 giving of security therefor. This order granting leave to proceed in forma pauperis shall not extend
22 to the issuance of subpoenas at government expense.

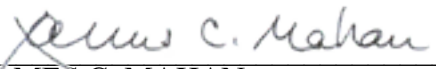
23 IT IS FURTHER ORDERED that the complaint (#1) is **DISMISSED** for failure to
24 state a claim upon which relief can be granted, with leave to amend. The clerk shall send to plaintiff
25 a civil rights complaint form with instructions. Plaintiff will have thirty (30) days from the date that
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27 ¹A lawsuit against a municipal organization like the police department would require
28 plaintiff to allege and prove that the conditions in the jail were the result of official policy or
custom. Monell v. Department of Social Services of City of New York, 436 U.S. 658, 690 (1978).

1 this order is entered to submit his amended complaint, if he believes that he can correct the noted
2 deficiencies. Failure to comply with this order will result in the dismissal of this action.

3 IT IS FURTHER ORDERED that plaintiff shall clearly title the amended complaint
4 as such by placing the word "AMENDED" immediately above "Civil Rights Complaint Pursuant to
5 42 U.S.C. § 1983" on page 1 in the caption, and plaintiff shall place the case number, 2:11-CV-
6 00538-JCM-(PAL), above the word "AMENDED."

7 DATED: June 10, 2011.

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10 JAMES C. MAHAN
11 United States District Judge
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